New Reporting Requirements Under the Maritime Liability Act for Shippers and Carriers of Chemically Hazardous Materials

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On June 11, 2016, Transport Canada commenced a round of consultations on the proposed *Marine Liability and Information Return Regulations* ("Regulations"). These Regulations are intended to replace the existing *Marine Liability Regulations*[1] and are expected to enter into force as of January 1, 2017. It is essential for the Canadian shipping industry to understand the new reporting obligations contained in the proposed Regulations and to properly prepare for their implementation.

Background: the International Framework

The 2010 *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea* ("Convention") establishes a system of compensation in the event of accidents at sea involving certain Hazardous and Noxious Substances ("HNS"), such as oil, liquefied gases, and other substances that pose chemical hazards. The Convention covers risks of loss of life or personal injury as well as loss of or damage to property.

The Convention aims to compensate claimants for damages arising from the international or domestic carriage of HNS by sea through compulsory insurance for carriers and contributions to the Hazardous and Noxious Substances Fund ("HNS Fund") made by the cargo interests. It is estimated that over 6,500 substances are regulated under the Convention. The Convention furthermore establishes certain reporting obligations for bulk hazardous and noxious substances received by individual receivers above certain thresholds in any given calendar year.

Goal of the Regulations

To date, Canada does not have an overall liability and compensation regime for ship-source incidents involving HNS. The implementation of the Convention is meant to fill that void. However, in order to be eligible to ratify the Convention, Canada must have collected reports on contributing cargo (i.e., bulk HNS carried by sea) received in its ports and offshore installations for the calendar year preceding the year of ratification.

The proposed Regulations create the framework for the data collection with which Canada must comply if it intends to ratify the Convention in the future.

Content of the new Regulations

As indicated, the Regulations will replace the existing *Marine Liability Regulations* under the *Marine Liability Act*[2]. The Regulations largely maintain the existing reporting requirements for the International Oil Pollution Compensation Funds, established under the *Civil Liability Convention*[3].

The novelty comes from Part 3 of the Regulations which requires persons in Canada to report, on a yearly basis, the quantities of bulk HNS they receive if, in a given calendar year, they receive at least: 17,000 tons of non-persistent oils, or 17,000 tons of LPG, or 17,000 tons of any other bulk HNS cargo, or any quantity of LNG cargo.

To ensure that Canada collects accurate information, the report must include (amongst others) contact information for the receiver, the type and quantity of contributing cargo received, and, in the case of agents, the principal for whom the cargo was received. By implementing the reporting requirements that way, the total amount of cargo received by associated persons (agents and principals) is combined per category (oil, LPG, LNG, and other bulk HNS). As soon as the combined amount received exceeds the reporting limits as described above, then both principal and agent must report the total quantity received. Principals must, in turn, report the names of their agents and the type and quantity of cargo received from the agents.

Furthermore, the Regulations require annual reporting, at the latest on the 28th day of February each year, which is consistent with the reporting obligations for persistent oil under the Canadian Ship-source Oil Pollution Fund.

The reporting threshold set by the Regulations is 17,000 tons for oils, LPG and HNS. Interestingly, the Convention's threshold, above which Canada must report to the HNS Fund, is higher, at 20,000 tons. This national reporting buffer is created to ensure that unexpected fluctuations and minor inconsistencies in national reporting do not cause Canada to be in a state of non-compliance with its international obligations under the Convention.

Impact of the Regulations

In general, the shipping industry has been supportive in creating a global liability regime for vessel-source HNS pollution. Estimates by Transport Canada show that only around 50 entities in Canada would surpass the reporting threshold in a given year. The administrative burden added on these actors by the Regulations is relatively low.

If the Regulations enter into force as planned on January 1, 2017, then Canadian shippers and carriers must begin monitoring and collecting the necessary data as of that date. The first reporting deadline will be February 28, 2018. Any person who fails to file the necessary report is guilty of an offence and liable on summary conviction to a fine of up to $1,000 for each day of default. In addition, the Minister has far-reaching investigative powers (searching private property, requiring assistance of any person

present, etc.) and interfering with or refusing to assist with the investigation carries a steep fine of up to $100,000.

Conclusions

The Canadian shipping industry would do well to study the new Regulations. Each entity, both for its own account as well as in the capacity of agent, should verify whether it surpasses, in a given calendar year, the reporting threshold in any of the four categories of noxious substances under the Regulations. From January 1, 2017 onwards, the industry as a whole must keep track of its incoming shipments of HNS, or risk running afoul Transport Canada.

[1] SOR/2002-307.

[2] S.C. 2001, c. 6.

[3] IMO, *International Convention on Civil Liability for Oil Pollution Damage*.

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